

**Appendix N**

**Example Easement Language**

The two examples in this appendix are taken from documentation used by the Gallatin Valley Land Trust (easement agreement), and the City of Billings and Yellowstone County (encroachment permit) to acquire trail rights-of-way.

Each easement is tailored to meet the needs of the Grantor and the Grantee.

## **TRAIL CORRIDOR ACCESS EASEMENT AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2000, by and between \_\_\_\_\_, with address at \_\_\_\_\_ (“Grantor”), and GALLATIN COUNTY, a public body of the State of Montana, with offices at 311 West Main Street, Bozeman, Montana 59715 (“Grantee”).

### **RECITALS**

WHEREAS, Grantor is the owner of certain real property in Gallatin County, Montana, more particularly described on **Exhibit A**, attached hereto and by this reference incorporated herein (“the Property”); and

WHEREAS, the Property lies between properties across which has been established a public trail easement that comprises part of a public trail system that is of significant interest and value to Grantee and the general public; and

WHEREAS, Grantor desires to donate to Grantee an easement across a portion of the Property for purposes of preserving open space and establishing a public, non-motorized trail that will connect previously established and planned public trails on nearby lands and thereby provide for and preserve open space and recreational opportunities and assist in shaping the character, and direction of development of Gallatin County; and

WHEREAS, Grantee is a “public body,” authorized to acquire interests in real property for purposes of providing or preserving open space land values and recreational opportunities;

WHEREAS, Grantee has entered into a Memorandum of Understanding (“MOU”) with the Gallatin Valley Land Trust where Grantee has agreed to accept easements of the nature contemplated herein on behalf of the public; and

WHEREAS, Grantee makes its acceptance of the easement contemplated herein under the terms and conditions of the MOU.

NOW, THEREFORE, it is agreed as follows:

#### **1. Grant of Easement.**

In consideration of the sum of one (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, The Grantor, \_\_\_\_\_, Hereby grants unto the Grantee, GALLATIN COUNTY, a trail easement (“the Easement”) on, over and across the Property consisting of a corridor thirty-five feet (35") in width lying along an alignment shown on the map attached hereto as **Exhibit B**, and by this reference incorporated herein, for the duration and purpose set forth herein below and consisting of the rights hereinafter enumerated.

## **2. Duration.**

The Easement is granted in perpetuity and shall run with the land so as to be forever binding upon the parties hereto and their respective heirs, personal representatives, administrators, successors and assigns.

## **3. Purpose.**

The purpose of this Easement is to preserve and maintain the area within the Easement boundary ("Easement Corridor") as open space and for use, preservation and maintenance of a right-of-way for a public, non-motorized trail for the use and benefit of the Grantee and the general public.

## **4. Rights Conveyed.**

The rights and corresponding obligations conveyed by this Easement are as follows:

- A. To maintain the Easement Corridor as open space free from man-made improvements except as otherwise provided herein;
- B. To establish within the Easement Corridor a trail for non-motorized use not to exceed five feet (5') in width;
- C. To lay out, mark, develop, construct, maintain or relocate a trail or foot path within the Easement Corridor;
- D. To make minor topographical changes to the Property within the Easement Corridor for the necessity and convenience of locating a trail;
- E. To establish and maintain appropriate signage within the Easement Corridor marking the trail and providing directions or other appropriate information in connection with the trail;
- F. To enter upon the Easement Corridor for all reasonable and necessary construction, maintenance and repair of the trail and Easement Corridor;
- G. To manage vegetation within the Easement Corridor through selective planting and/or removal of trees, shrubs, grasses or exotic or noxious plant species in order to maintain and enhance the scenic, natural, ecological and open space values of the Easement Corridor; and
- H. To maintain the Easement Corridor in a good, clean and sanitary condition, free from waste or litter and any condition that is offensive to the public health, safety or welfare or that constitutes a nuisance.

**5. Limitation on Use of the Easement.**

Except for motorized or battery propelled wheelchairs, public access on, over or across the Easement is limited to access by foot or other non-motorized means. Use of motor vehicles within the Easement Corridor is prohibited, except for motor vehicles used by Grantor or used by Grantee for purposes of construction or maintenance of any trail that may be established within the Easement Corridor, or for emergency access for wildfire and structural fire suppression and to facilitate search and rescue operations.

**6. Fees.**

No fees shall be charged for use of the Easement by the general public.

**7. Liability/Indemnification.**

Grantor shall enjoy the limitations on legal liability involving recreational use of the Easement or trail as provided for in §§70-16-301 and 70-16-302 of the Montana Code Annotated. Notwithstanding the foregoing sentence, Grantee agrees to indemnify and forever hold Grantor harmless from any loss, damage, injury or death arising from any act or omission of Grantee, its invitees, licensees, employees or agents caused to person or property of Grantor or its employees or to the person or property of any other individual or entity, including any governmental entity, while on or near the Easement.

**8. Grantor's Representations.**

Notwithstanding the Easement granted herein is without warranty, Grantor represents that he is the current owner in fee title to the Property, and that he has full legal authority to grant this Easement to Grantee free of liability for any lien or encumbrance previously placed thereon by Grantor.

**9. Retained Rights.**

Except for the rights expressly conveyed to Grantee hereunder, Grantor reserves to himself, his personal representatives, heirs, successors and assigns all other rights arising out of ownership of the Property, including, without limitation, the right to engage in, or permit or invite others to engage in, all uses of the Property not expressly prohibited herein and that are not inconsistent with the terms of this Easement, including, again without limitation, the following enumerated rights:

- A. A right-of-way on, over and across the Easement for purposes of ingress, egress, construction of a roadway and placement of underground utilities for the benefit of the Property and adjacent property that is or may hereafter be acquired by Grantor, the location of said right-of-way to be designated by Grantor at a future date; and

B. To relocate (but not terminate) the Easement as described herein, provided that Grantor shall first give Grantee reasonable, advance notice of Grantor's intention to relocate the Easement and the Grantee agrees with the new location. The Grantee shall enjoy all rights conveyed herein with respect to the Easement as relocated.

**10. Enforcement.**

This Agreement may be enforced by any means or remedy available at law or in equity, including the remedy of specific performance.

**11. Acceptance.**

By its signature set forth here inbelow, Grantee hereby accepts the foregoing grant of this Trail Access Easement subject to the terms and conditions herein contained.

**12. Binding Effect.**

This Agreement extends to and is binding upon the parties and their respective heirs, personal representatives, successors and assigns.

DATED this \_\_\_ day of \_\_\_\_\_, 2000.

**GRANTOR:**

By: \_\_\_\_\_  
Land Owner

**GRANTEE:**

GALLATIN COUNTY

By: \_\_\_\_\_  
County Commissioner Chairman

**ACKNOWLEDGMENTS**

STATE OF MONTANA     )  
                                          ) ss.  
County of Gallatin     )

          This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2000  
by \_\_\_\_\_, Grantor.

(SEAL)

\_\_\_\_\_  
Notary Public for State of Montana  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF MONTANA     )  
                                          ) ss.  
County of Gallatin     )

          This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2000  
by \_\_\_\_\_, County Commissioner for GALLATIN COUNTY,  
Grantee.

(SEAL)

\_\_\_\_\_  
Notary Public for State of Montana  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

(Legal Description of Property)

**EXHIBIT B**

(Map With Delineation of Trail Corridor Alignment)

## **ENCROACHMENT PERMIT**

The Cenex Pipeline Co. (Cenex) hereby permits the City of Billings (City) and Yellowstone County (County) to cut through and transverse the Cenex Pipeline Company right-of-way for a public bikeway/walkway trail easement.

### **Provisions & Specifications for Permit:**

1. Cenex Pipeline Co. shall be notified 24 hours before start of work.
2. Protection of Traffic: Insofar as the interests of the Cenex Pipeline Co. and the traveling public are concerned, all work performed under this permit shall be done under the supervision of the City of Billings or Yellowstone County. The work shall not unreasonably interfere with operation and maintenance of the Cenex pipeline and where applicable, the City or County shall provide safety precautions for any road traffic during construction.
3. The bikeway/walkway trail is a cement trail approximately ten (10) feet in width and at a depth of 6 inches.
4. Any cut shall be back-filled with non-settling material and tamped as filled to the level of the adjoining soil. All Excess material and debris shall be removed from the site by the City or County.
5. Cenex Saved Harmless from Claims: In accepting this permit, the City and County, their successors or assigns, agree to protect Cenex and save it harmless from all claims, actions or damage of every kind and description which may arise by reason of the performance of any bikeway/walkway trail work, character of materials used, or manner of installation, maintenance and operation, or by the improper occupancy of said pipeline right-of-way, and if any suit or action is brought against Cenex Pipeline Co. arising out of, or by reason of, any of the above causes, the City and County, their successors or assigns, will, upon notice to them of the commencement of such action, jointly defend the same at their sole cost and expense and jointly satisfy any judgment which may be rendered against Cenex Pipeline Co. in any such suit or action.
6. Cenex not Liable for Damage to Bikeway/Walkway Trail: In accepting this permit, the City and County agrees that any damage or injury done to the bikeway/walkway trail by a contractor working for Cenex, or by any Cenex employee engaged in a construction, alteration, repair, maintenance or improvement of the Cenex pipeline shall be at the sole expense of the City or County, unless the Cenex Pipeline Co. shall have failed to exercise reasonable care in avoiding damage to the trail.
7. Suspension: Cenex of his agent further agrees that if the above conditions are not met, this permit may be suspended by Cenex upon 14 days written notice to the City and County until the above conditions are met.



IN WITNESS WHEREOF, the Grantor and Grantee have executed this agreement on the dates set forth below.

GRANTOR: Cenex Pipeline Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MONTANA )  
                                          : SS  
County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, A.D., before me, the undersigned, a Notary Public for the Sate of Montana, personally appeared \_\_\_\_\_, known to me to be the person(s) who executed the within instrument and acknowledged to me that they signed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first written above.

(NOTARY SEAL)

\_\_\_\_\_  
NOTARY PUBLIC for the Sate of Montana

Residing at \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

GRANTEE: CITY OF BILLINGS

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

City Clerk

STATE OF MONTANA )

: SS

County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, A.D., before me, the undersigned, a Notary Public for the Sate of Montana, personally appeared \_\_\_\_\_, known to me to be the person(s) who executed the within instrument and acknowledged to me that they signed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first written above.

(NOTARY SEAL)

\_\_\_\_\_  
NOTARY PUBLIC for the Sate of Montana

Residing at \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

GRANTEE: COUNTY OF YELLOWSTONE

By: \_\_\_\_\_(Seal)  
As Chairman of the Board of County Commissioners of Yellowstone County

STATE OF MONTANA )  
                                      : SS  
County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, A.D., before me, the undersigned, a Notary Public for the Sate of Montana, personally appeared \_\_\_\_\_, known to me to be the person(s) who executed the within instrument and acknowledged to me that they signed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first written above.

(NOTARY SEAL)

\_\_\_\_\_  
NOTARY PUBLIC for the Sate of Montana  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_